

### **REMARKS/ARGUMENTS**

Applicants have reviewed and analyzed the Office Action dated November 24, 2008, and provide the following remarks and comments in response thereto. Claims 26 and 35-42 have been cancelled without prejudice or disclaimer. Claims 9, 10, 12, 17, 18 and 31 have been amended. No new matter has been added. Upon entry of this Amendment, and Request for Continued Examination filed herewith, claims 9-25 and 27-34 will remain pending in this application. Reconsideration and allowance of the instant application are respectfully requested.

#### ***Claim Rejections Under 35 U.S.C. §101***

Claims 17-26 stand rejected under 35 U.S.C. §101 because the claims are allegedly directed to non-statutory subject matter. In particular, the Office Action asserts that para. [0050] of Applicants' specification allegedly describes tangible machine readable media as including propagated signals, such as optical and acoustical signals. Applicants respectfully disagree. Nowhere in Applicants' specification is **tangible** machine readable media described as including such signals. Applicants respectfully submit that tangible machine readable media does constitute statutory subject matter as such inventions fall under at least the category of articles of manufacture. Accordingly, Applicants request withdrawal of this rejection.

#### ***Claim Rejections Under 35 U.S.C. §103***

Claims 9-11, 13-15, 17-19, 21-23, 25, 28-30, 31 and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wharton *et al.* (U.S. Patent No. 5,831,664, "Wharton") in view of Darbee *et al.* (U.S. Patent No. 6,130,726, "Darbee"), Goldstein (U.S. Patent No. 5,410,326, "Goldstein") and Lappington *et al.* (U.S. Patent No. 5,519,433, "Lappington"). Claims 12, 16, 20 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wharton, Darbee, Goldstein, Lappington and Banker *et al.* (U.S. Patent No. 5,477,262, "Banker"). Claims 26, 32 and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Wharton, Darbee, Goldstein and Lappington and further in view of Yen *et al.* (U.S. Patent No. 5,991,799, "Yen"). Claim 27 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Wharton, Darbee, Goldstein and Lappington and further in view of Stautner *et al.* (U.S. Patent No. 6,172,677, "Stautner"). These rejections are respectfully traversed.

Amended independent claim 9 recites, *inter alia*, “providing a visual indication, through the mobile hand-held device, of an availability of the interactive application, wherein the mobile hand-held device is configurable to selectively deactivate visual indications on a display separate from the mobile hand-held device independently of whether visual indications are displayed on the display of the mobile hand-held device.” Nowhere do any of the cited references teach or suggest such features. The Office Action asserts at p. 9, para. 7, that Yen describes a system wherein a user is provided the means to control whether information of interest to which the system is alerted is displayed on screen. Applicants respectfully disagree. As noted in Applicants’ previous response dated October 16, 2008, the cited passages of Yen merely relate to the ability of a recipient to set an alert threshold or alert criteria so that scheduled programming causes a foreground element to transition from an engaging state to a nonengaging state. Col. 13, ll. 28-39. The Office Action appears to consider a nonengaging state to be a state of deactivation. However, Yen does not support such an assertion. In particular, Yen specifically states that, even in the nonengaging state, selectable information items are *displayed* in an unobtrusive location on the screen. Col. 13, ll. 40-48. While a recipient may specify an alert threshold for interrupting items, Yen does not teach or suggest being able to configure whether an indication of the availability of the interactive application is *provided* to the display. Accordingly, claim 9 is allowable for at least this reason.

Even assuming, without conceding, that Yen does describe the ability to activate or deactivate the display of a foreground element, Yen still lacks a teaching or suggestion of selective deactivation of an indicator on a display separate from the mobile hand-held device, wherein the selective deactivation is independent of whether visual indications are displayed on the mobile hand-held device as recited in claim 9. For example, nowhere does Yen describe that changing to a nonengaging state is selectively performed for a display separate from a mobile hand-held device. In fact, Yen does not teach or suggest a display on a hand-held device (the Office Action uses Darbee for allegedly teaching such a feature). The additional cited references fail to cure the deficiencies of Yen with respect to claim 9 and, thus, claim 9 is allowable over the cited references.

Claims 17 and 31 have been amended to recite features similar to those described above with respect to claim 9 and are thus allowable for at least the same reasons as claim 9.

Claims 10-16, 18-25, 27-30 and 32-34 are dependent claims and are thus allowable for at least the same reasons as their respective base claims and further in view of the novel and non-obvious features recited therein. Accordingly, Applicants respectfully request withdrawal of these rejections.

### **CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. However, if for any reason the Examiner believes the application is not in condition for allowance or there are any questions, the Examiner is requested to contact the undersigned at (202) 824-3156.

Respectfully submitted,  
  
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